SUPREME COURT, U. S.
Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-6031

M. C. MANUFACTURING COMPANY, INC. and
UNIVERSAL AUTOMATIC MACHINES, INC.
Petitioners
vs.
TEXAS FOUNDRIES, INC.
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF TEXAS, 9TH SUPREME JUDICIAL DISTRICT

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Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Civil Appeals of Texas, Beaumont, entered in the above-entitled case on January 30, 1975.

CITATIONS TO OPINIONS BELOW

The holding of the District Court, Angelina County, is unreported, but the judgment of that Court is printed in Appendix A hereto, *infra*, p. 1. The opinion of the Court of Civil Appeals of Texas, Beaumont is reported in 519 S.W. 2d 269. The Supreme Court of Texas refused writ of error on June 11, 1975.

JURISDICTION

The judgment of the District Court, Angelina County, was entered on August 28, 1974. The judgment of the Court of Civil Appeals of Texas, Beaumont, was entered on January 30, 1975. The Supreme Court of Texas refused writ of error on June 11, 1975 and overruled motion for rehearing on July 9, 1975. The mandate of the Court of Civil Appeals issued on July 23, 1975.

HOW FEDERAL QUESTIONS PRESENTED

The contention that the Texas District Court lacked authority to hear Respondent's cause of action which had been barred by a judgment entered by the United States District Court for the Eastern District of Texas, Marshall Division, on the 31st day of January, 1974 in Civil Action No. 1614 on the docket of said Court styled *M. C. Manufacturing Company, Inc. and Universal Automatic Machine Company, Inc. v. Texas Foundries, Inc. and H. R. Products, Inc.* was first raised by the Petitioners by their Plea in Bar filed May 2, 1974 in the District Court of Angelina County, Texas. Petitioner's contended by said Plea that the subject matter of the case at Bar was that of a compulsory conterclaim and that by virtue of the provisions of Rule 13 of the Federal Rules of Civil Procedure relating to compulsory conterclaims the cause of action asserted by Texas Foundries, Inc. in the case at Bar against M. C. Manufacturing Company, Inc. and Universal Automatic Machines, Inc. was permanently and forever barred. The questions were presented to the Court of Civil Appeals, Beaumont, by appeal. The Petition is for a Writ of Certiorari addressed to the Court of Civil Appeals of Texas, Beaumont, because the Supreme Court of Texas refused writ of error.

QUESTIONS PRESENTED

Whether the provisions of Rule 13 of the Federal Rules of Civil Procedure prohibit the subject matter of a compulsory counterclaim from being adjudicated in a State Court after judgment has been rendered by the Federal District Court, and whether Rule 13 bars recovery on the subject matter of a compulsory counterclaim not raised in the Federal Court.

STATUTE INVOLVED

The statutory provision involved is Rule 13 (a) of the Federal Rules of Civil Procedure which reads as follows:

Compulsory Counterclaims - A pleading shall state as a counterclaim any claim which at the time of serving the pleader has against any opposing party, if it arises out of the transaction or occurance that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.

STATEMENT

Petitioners filed an Anti-trust action against Respondent in the United States District Court for the Eastern District of Texas, Marshall Division. Petitioners secured Service of Process and Respondent answered. Respondent filed its State Court suit against Petitioners. Petitioners proceeded to judgment in the Federal Court action against Respondent on January 31, 1974. At no time in the Federal Court proceeding did Respondent plead, raise, allude to, or bring forth its compulsory counterclaim against Petitioners. Respondent proceeded to the judgment below on August 28, 1974, against Petitioners' Pleas In Bar and Abatement. Respondent appealed the judgment of the United States District Court of Appeals, Fifth Circuit. The United States Court of Appeals reversed the judgment of the United States District Court and Petitioners filed Motion for Rehearing. The United States Court of Appeals has ordered Respondent to reply to said Motion.

From the judgment of the District Court of Angelina County, Texas, timely appeal was taken to the Texas Court of Civil Appeals, Beaumont. The Court of Civil Appeals affirmed the judgment below in its opinion of January 30, 1975. (Appendix A).

The Court of Civil Appeals admitted this to be a case of

first impression. The only guidelines available to that Court were the numerous cases relative to attempts made at securing an order enjoining the prosecution of the State Court Case, rather than a Plea In Bar. The Court took the position that it saw no reason why the same rules should not be applied to both types of cases. The Court of Civil Appeals admitted, however, that, even though Federal Courts lack authority to enjoin State Court actions involving claims arising out of a transaction already involved in a Federal Court case, that a State Court may only proceed with the litigation until judgment is obtained in the Federal Court which may be set up as *res adjudicata.* However, since the judgment of the United States District Court was on appeal, the Court of Civil Appeals refused to view the judgment as a "final" judgment for the purposes of Rule 13 barring further litigation of the same subject matter. The Court relied its decision on *Fantecchi v Gross,* 158 F. Supp. 684 (E.D. Pa. 1957), in that Rule 13 (a) did not give the Federal Courts the authority to *enjoin* State Court actions involving claims arising out of a transaction already involved in a Federal Court case. The Court declined to undertake the question of whether or not the same result would be reached had the Federal Court judgment been entered and a Plea in Bar raised in the State Court.

REASONS FOR GRANTING THE WRIT

The action of the District Court and its affirmance by the Court of Civil Appeals nullified the intended effect of Rule 13 (a) of the *Federal Rules of Civil Procedure.* The Federal Rule is more than a mere housekeeping rule to expedite the Court's business. It is a substantive rule of law requiring an opposing party to bring forth a compulsory counterclaim or lose forever that cause of action. The rule defines the scope of the casue of action to which *res adjudicata* will apply and presents an estoppel against the party who fails to comply with

it, thus barring the action no matter where it is brought. For this reason several State Courts have properly held a claim barred for failure to plead it as a counterclaim in a federal action. Among these are Pennsylvania, Ohio, Tennessee, California and North Carolina. [1]

The question thus arises as to whether a State Court will be permitted to ignore the substantive impact of the *Federal Rules of Civil Procedure* and the Federal Decisions pertaining thereto. This honorable Court should settle the question as to whether or not the *Federal Rules of Civil Procedure,* in particular Rule 13 (a), is merely a housekeeping rule to expedite the Court's business and thus has no effect whatsoever outside the confines of the particular Federal Court in which the cause of action may be pending, or whether it is truly a substantive rule of law to be followed and upheld by other Courts. Of necessity it becomes necessary to determine at what time a judgment becomes final for the purposes of interjecting a new cause of action. For this purpose, the judgment is final upon entry. Of course, it may be appealed, but a compulsory counterclaim cannot later be asserted during some stage of the appeal process. During appeal, the Judgment may not be modified by either party or by the Trial Judge. It may not be set aside by the Trial Judge on his own Motion. It matters not that the Judgment may be the subject of an Appeal. No new issues and no new counterclaim may be asserted on appeal. The Texas Court of Civil Appeals relied upon *Fantecchi v Gross, supra* for the reasoning the Federal Courts lacked the authority to enjoin State Court actions involving claims arising out of a transaction already involved in a Federal Court case (See Opinion p.4). However, *Fantecchi* dealt primarily with injunctive relief, and failed to resolve the question as to whether or not a defendant would be barred from pleading a compulsory counterclaim in a State Forum on the ground that it is

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[1] Wright, *Law of Federal Courts,* Sec. 79 (1970).

res judicata. The Court in *Fantecchi* said:

> . . .Insofar as the effect of a party's failure to plead a compulsory counterclaim under said Rule and a Federal action is concerned the Congressional intent is clear - said party is thereafter barred from pleading same on the ground that it is res judicata. However, insofar as the effect of such failure on a State Court action is concerned the Congressional intent is not so clear; thus, in Rule 13 (a) we are unwilling to say that Congress, in adopting said Rule, intended to grant Federal Courts the authority to enjoin State Court actions . . . . (158 F. Supp. at 678).

Thus *Fantecchi,* even though denying a federal injunction to prohibit State Court litigation, does hold that a party is thereafter barred from pleading the compulsory counterclaim.

But is it even necessary to determine whether or not the Federal Court Judgment had become final? It would appear not in light of *National Equipment Rental, Ltd. v Fowler,* 287 F. 2d 43 (2nd Cir. 1961). In *National Equipment* the Plaintiff, National Equipment Rental, Ltd. (National) brought action against A. L. Fowler and other in the U. S. District Court for the Eastern District of New York alleging the Defendant had defaulted in the payment of monthly rentals proved for in a written lease of ice-making equipment. Service was perfected upon the Defendant, who appeared generally. Issue was joined on December 8, 1958, when the Defendant filed an answer denying the material allegations of the complaint. A notice and order for a pretrial conference to be held on May 20, 1959 was mailed to all attorneys on March 12, 1959. On April 27, 1959, after receipt of this pre-trial conference order, one of the Defendants commenced an action against the Plaintiff, based upon the same lease agreement, in the U. S. District Court for the Northern District of Alabama, alleging National's breach of the terms of the lease and fraud

in its inducement. Service was perfected upon National. National moved to quash the service but this motion was denied. National then moved the Alabama Federal Court to stay prosecution and for a transfer of the case to the Eastern District of New York where the prior action was pending. This Motion was denied. Thereafter, on January 25, 1960, National moved in its 1958 case in the Eastern District of New York for an order to enjoin the Defendant from proceeding further in the Federal Court action in Alabama and to transfer the second commenced Alabama action to the Eastern District of New York. The New York Federal District Judge granted the Motion in all respects. The Defendant appealed.

The Court of Appeals affirmed that portion of the order that enjoined the Defendant from further prosecuting the Alabama action. The Court stated this to be a sound exercise of judicial discretion. (287 Fed. 2d at 45). The Court reasoned that the second cause of action arose from the same transaction of lease and was pleadable in the New York action as a compulsory counterclaim under Rule 13 (a). The Court stated that the penalty for failure to assert a compulsory counterclaim is the preclusion of a later assertion of that Claim. The purpose of the compulsory counterclaim devise being to bring all logically related Claims into a single litigation, thereby avoiding the multiplicity of suits. The Court wisely held that "Sound judicial discretion dictates that the second court decline its consideration of the action before it until the prior action before the first court is terminated. (citing cases.") (287 Fed. 2d at 45). The Court reasoned further:

. . .As Judge Parkinson said in Martin v Graybar Electric Co., supra, 266 F. 2d at page 204:

> "Two simultaneously pending lawsuits involving identical issues and between the same parties, the parties being transposed and each prosecuting the other independently, is certainly anything but

> conducive to the orderly administration of justice. We believe it to be important that their be a single determination of a controversy between the same litigants and, therefore, a party who first brings an issue into a Court of competent jurisdicition should be free from the vexation of concurrent litigation over the same subject matter, and an injunction should issue enjoining the prosecution of the second suit to prevent the economic waste involved in duplicating litigation which would have an adverse effect on the prompt and efficient administration of justice unless unusual circumstances warrant."

Thus there is really no necessity for the finding of a final judgment in the prior litigation. Certainly *National Equipment* did not require a final judgment, indeed the prior case had not even been tried. But the Court did see fit to enjoin the Defendent from prosecuting his compulsory counterclaim in another Federal District Court in another state. Surely it follows that if a Defendant may be enjoined by a Federal District Court in one state from litigating in a Federal District Court of another state on the theory that the penalty for failure to assert a compulsory counterclaim is a preclusion of a later assertion of that claim, then certainly such a Defendant would be barred from asserting his claim in a State District Court. To hold otherwise would result in State Courts having the power to ignore that vast body of law pertaining to such suits being barred for failure to assert a compulsory counterclaim when at the same time a Federal Court would be bound to uphold it. State Courts should not be free to do that which Federal Courts are not free to do. To hold otherwise would only serve to diminish the stature and authority of our federal jurisprudence.

In the case at Bar, Texas Foundries, Inc., was not at liberty to select a different forum for its compulsory counterclaim. If it chose not to assert it in the Federal Court

action, it was therefore penalized. The penalty for failure to assert a compulsory counterclaim is that if the action proceeds to judgment without the interposition of a counterclaim, the counterclaim is barred. *(Notes of Advisory Committee on Rules,* Rule 13, Note 7). Thus there is a *penalty* attached to the failure to raise such counterclaim. The *penalty* is enforced by barring said Claim. No court, especially an inferior State Court, is free to ignore the intent of Congress.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted. The state of the law should be made known as to whether litigants in the Federal System of Jurisprudence will be free to rely upon their Judgment obtained in Federal Court as the final outcome to their controversy or forced to stand and wait for the other shoe to fall in State Court.

Respectfully submitted,

Don Stokes

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Counsel for Petitioners

October 16, 1975

CERTIFICATE OF SERVICE

I hereby certify that on October ~~17~~ 26, 1975 there was served upon Zelesky, Corneluis, Rogers, Berry & Hallmark, Attorneys for Respondent, P. O. Drawer 1728, Lufkin, Texas, 75901, by duly addressed United States mail, postage prepaid, a copy of the attached Petition For Writ of Certiorari.

Don Stokes

Of Counsel